CMPMO No.155 of 2007.

21.11.2007. Present: Mr. B.N. Mishra, Advocate, for the petitioners.

Mr. Shrawan Dogra, Advocate, for respondent No.1.

Mr. Ramakant Sharma, Advocate, for respondent No.2.

On this petition coming up for consideration today, learned counsel for the parties, namely, Mr. B.N. Mishra, learned counsel appearing for the petitioners, Mr. Shrawan Dogra, learned counsel appearing for respondent No.1 and Mr. Ramakant Sharma, learned counsel appearing for respondent No.2 have all agreed that this petition be disposed of as settled and the following agreed order be passed.

Mr. Ramakant Sharma submits that his client has already constructed and completed a retaining wall and that on the land belonging to him, he proposes to construct a house as per the building plan already approved by the Municipal Corporation. Mr. B.N. Mishra submits that because of the construction of retaining wall and in the manner it has been done the house of the petitioners has been endangered. Mr. Mishra also submits that unless the remedial measures are taken, such as reinforcement of the already constructed retaining wall, danger to the structure of the petitioners would persist and continue.

The Commissioner, Municipal Corporation, Shimla shall either himself inspect the site or get it inspected by technical experts. The inspection in either case shall be carried out

in the presence of the petitioners/their representative and respondent No.2/his representative. During the inspection, it shall specially be observed and noticed as well as found out as to whether the retaining wall constructed by respondent No.2 and in the manner as well as the extent in which it has been done has caused any danger to the structure of the petitioners or it has any potential of endangering the construction in future. If yes, what remedial measures can be taken.

After the aforesaid report is received, the Commissioner shall call both the parties in his office chamber and strive for an amicable settlement between both of them by adopting such measures as are acceptable to both. This of course is subject to the condition that in his opinion as well as based upon the report, any damage has been caused to the structure of the petitioners or there is a threat of any damage being caused in future. If the parties do not agree for an amicable settlement, the Commissioner shall proceed to pass order on the merits of the case and in accordance with law. Any party aggrieved shall have the remedy available to him under law. The aforesaid exercise in all respects shall be completed by the Commissioner and final order, either way, either based on the amicable settlement or based on contest and on the merits of the case, shall be passed before 31st December, 2007.

Till the aforesaid exercise is completed in all respects and final order, either way, is passed by the Commissioner, the interim order passed by this court shall continue to operate.

The petition is disposed of.

CMP No.506 of 2007.

In view of the disposal of the main petition, this application shall stand disposed of.

21st November, 2007. (V.K. Gupta), C.J.
(tr)